



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CTI/164705

PRELIMINARY RECITALS

Pursuant to a petition filed March 18, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on April 09, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's 2015 appeal of a 2011 and 2012 notice of tax intercept is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Glennetta Rucker

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The petitioner has three child care overpayment claims: claim number [redacted], claim number [redacted], and claim number [redacted]

3. Claim number [REDACTED]
  - a. On November 2, 2011 the agency sent the petitioner a child care overpayment notification. The notification stated that the petitioner was overpaid \$235.00 in child care benefits from October 3, 2010 through October 31, 2010.
  - b. The agency sent the petitioner a repayment agreement on August 2, 2011.
  - c. The agency sent the petitioner dunning notices reminding her of this debt on April 4, 2011, May 3, 2011, and June 2, 2011.
  - d. On July 15, 2011 the agency sent the petitioner a notice of tax intercept.
4. Claim number [REDACTED]
  - a. The agency sent the petitioner a notice of overpayment on October 21, 2010. The notice of overpayment stated that the agency overpaid \$5,668.00 for child care from May 3, 2009 through October 31, 2009.
  - b. On October 22, 2010 the agency sent the petitioner another child care overpayment notification stating that agency overpaid \$5,668.00 for child care from May 3, 2009 through October 31, 2009.
  - c. On November 2, 2010 the agency sent the petitioner a repayment agreement.
  - d. The petitioner appealed this underlining overpayment arguing that the overpayment should have never been assessed. The agency assessed the overpayment because she lived with her mother who was not working, and her mother should have been able to take care of her child while the petitioner attended school and worked. The petitioner argued that her mother was a drug user, and that she did not feel comfortable leaving her child with her mother. On March 18, 2011 ALJ Catherine G. Demski issued a written decision addressing this overpayment. ALJ Demski wrote: "The petitioner testified that her mother should not have been providing child care of the baby, as she was unfit to do so due to substance abuse issues. While the petitioner may be correct that a person who has substance abuse issues should not be allowed to care for an infant child, the policy requires that the petitioner provide the agency with some form of medical excuse in order to qualify for an exception to the rule."
  - e. The agency sent the petitioner dunning notices reminding her of this debt on April 4, 2011, May 3, 2011, and June 2, 2011.
  - f. On July 15, 2011 the agency sent the petitioner a notice of tax intercept.
5. Claim number [REDACTED]
  - a. On December 6, 2011 the agency sent the petitioner a child care overpayment notification stating that the petitioner was overpaid \$4,607.16 in child care benefits from January 10, 2011 through November 30, 2011.
  - b. On January 3, 2012 the agency sent the petitioner a repayment agreement.
  - c. The petitioner appealed the underlining overpayment, and March 29, 2012 ALJ Nancy Gagnon issued a written decision concluding that the petitioner was overpaid \$2,667.16 in child care for some of the time period, an unknown amount for an additional time period, and not overpaid during another portion of this overpayment period. ALJ Gagnon remanded the case to the agency to correctly re-determine the overpayment.
  - d. On April 6, 2012, following ALJ Gagnon's decision, the agency sent the petitioner a child care overpayment notice stating that the petitioner was overpaid \$3,158.69 in child care benefits from January 10, 2011 through October 31, 2011.

- e. The agency sent the petitioner a notice of tax intercept on April 13, 2012.
6. On March 18, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

### **DISCUSSION**

The overpayment rules require the agency to recover overpayments, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1. A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2. In this case, the date of the notice was July 15, 2011 and April 13, 2012. The Division of Hearings and Appeals did not receive Petitioner's request for fair hearing until March 18, 2015. This is well outside of the 30 day window, and Petitioner's appeal of the tax intercept is untimely. Therefore, I am without jurisdiction to decide whether the agency correctly implemented the tax intercept.

At a hearing concerning the use of a tax intercept to collect a Child Care overpayment, appeal of the determination of underlying overpayment is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination. The hearing is specifically limited to the tax intercept and whether or not the State agency correctly used the tax intercept. *Id.*

The doctrine of claim preclusion is described in *Northern States Power Co. v. Bugher*, 189 Wis. 2d 541, 525 N.W. 723 (1995). As the Wisconsin Supreme Court has explained, under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is 'designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand.'" *Ibid.*, p. 550. Claim preclusion is correctly invoked where there are identical parties, the identical issue ("identity between the causes of action in the two suits"), and a final decision on the merits before the Division of Hearings and Appeals. A companion legal doctrine of judicial efficiency, issue preclusion, is properly invoked by an ALJ when there is an identical issue from a prior case, and a final decision on the merits before the DHA. Although parties do not have to be the same (they may be the same, however) in an issue preclusion scenario, the extra burden of performing a "fundamental fairness" analysis must be met by the ALJ before invoking issue preclusion. See *Michelle T. v. Crozier*, 173 Wis. 2d 681,688, 495 N.W.2d 327 (1993).

In this case the petitioner sought to challenge the underlying overpayment. This is not allowed in an appeal on a tax intercept. However, claim and issue preclusion also apply. The petitioner's argument was that she could not leave her baby with her mother who was on drugs while she worked full time and attended school full time. This specific argument was previously considered and rejected by ALJ Demski in the petitioner's appeal of one of these child care overpayments. ALJ Demski wrote: "The petitioner testified that her mother should not have been providing child care of the baby, as she was unfit to do so due to substance abuse issues. While the petitioner may be correct that a person who has substance abuse issues should not be allowed to care for an infant child, the policy requires that the petitioner provide the agency with some form of medical excuse in order to qualify for an exception to the rule."

### **CONCLUSIONS OF LAW**

The petitioner's 2015 appeal of a 2011 and 2012 notice of tax intercept is not timely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 13th day of April, 2015

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 13, 2015.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit